

§ 248.203

(1) Ensuring adequate and responsible participation by the board of directors and the membership of the nonprofit purchaser in ownership decisions, including ensuring resident input in these decisions;

(2) Facilitating long-range planning by the board of directors to ensure the physical, financial and social viability of the project for the entire time the project is maintained as low income housing; and

(3) Assisting the ownership in complying with regulatory, use, loan and grant agreements.

Regulatory Agreement. The agreement executed by the owner and the Commissioner or a State agency providing for the Commissioner's regulation of the operation of the project.

Reserve for Replacements. The escrow fund established under the regulatory agreement for the purpose of ensuring the availability of funds for needed repair and replacement costs.

Residual Receipt Fund. The fund established under the regulatory agreement for holding cash remaining after deducting from the surplus cash, as defined by the regulatory agreement, the amount of all allowable distributions.

Return on Investment. The amount of allowable distributions, tax benefits, and other income or benefits received by the owner, as a percentage of the equity.

Termination of Low Income Affordability Restrictions. The elimination of low income affordability restrictions under the regulatory agreement through termination of mortgage insurance or prepayment of the mortgage.

Use Agreement. An agreement or covenant which is executed and recorded in the appropriate land records in connection with an approved plan of action, has lien priority over other mortgages and liens, is binding upon the owner and its successors and assigns, is enforceable by the Commissioner and by tenants, contains appropriate reporting requirements, and restricts or governs the use and operation of the project with respect to rent levels and increases, relocation, and, where appropriate, tenant eligibility, civil rights and other requirements. All tenants in occupancy at the time that the plan of

action is approved will receive a copy of the use agreement.

Very Low Income Families. Families or persons whose incomes do not exceed the level established for very low income families under section 3(b) of the 1937 Act (42 U.S.C. 1437a(b)).

[55 FR 38952, Sept. 21, 1990. Redesignated at 57 FR 12041, Apr. 8, 1992, and amended at 57 FR 57314, Dec. 3, 1992; 58 FR 37816, July 13, 1993; 61 FR 5207, Feb. 9, 1996; 64 FR 26639, May 14, 1999]

§ 248.203 General prepayment limitation.

(a) An owner of eligible low income housing may prepay, and a mortgagee may accept prepayment of, a mortgage on such housing only in accordance with a plan of action approved by the Commissioner.

(b) A mortgage insurance contract with respect to eligible low income housing may be terminated pursuant to section 229 of the National Housing Act only in accordance with a plan of action approved by the Commissioner.

(c) A mortgagee's acceptance of a prepayment in violation of paragraph (a) or termination of a mortgage insurance contract in violation of paragraph (b) of this section is grounds for administrative action under parts 24 and 25 of this title, in addition to any other remedies available by law, including rescission of the prepayment or reinstatement on the insurance contract.

§ 248.211 Notice of intent to prepay.

(a) An owner of eligible low-income housing seeking to prepay its mortgage or to negotiate changes in the terms of the mortgage or regulatory agreement in accordance with this part, including termination of the insurance contract pursuant to section 229 of the National Housing Act, shall file a notice of intent with the HUD field office in whose jurisdiction the project is located, and shall file a duplicate copy with the HUD Headquarters Office of Multifamily Housing Management, 451-7th Street, SW., Washington, DC 20410. The notice of intent shall identify the project by name, project number and location, briefly describe the owner's plans for the project, including any timetables or deadlines for actions to be taken, and the reason the owner

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seeks to prepay the mortgage or change the terms of the mortgage or regulatory agreement, and briefly describe any contacts that the owner has made or is making with other governmental agencies or other interested parties in connection with the notice of intent.

(b) An owner simultaneously shall file the notice of intent with:

(1) The chief executive officer of the appropriate State or local government in which the project is located, or any officer designated by executive order or State or local law to receive such information;

(2) Each tenant in the project; and

(3) The mortgagee.

In addition, the owner shall post a copy of the notice of intent in each occupied building in the project.

(c) Upon receipt of a notice of intent, the Commissioner will provide the owner with information that the owner needs to prepare a plan of action. This information shall include information regarding the Commissioner's standards under § 248.221 of this part regarding the approval of a plan of action involving termination of low income affordability restrictions, and any relevant market area and demographic information that the Secretary has custody of and that the owner may use in preparing the plan of action; in addition, it shall include at a minimum a list of the Federal incentives authorized under § 248.231 of this part for those projects for which a plan of action involving termination of low income affordability restrictions would not be approvable.

(d) Filing a notice of intent with the Commissioner will lead to one of the following results:

(1) Where the project meets the requirements of § 248.221 of this part—

(i) The Commissioner will approve the prepayment or the termination of mortgage insurance pursuant to § 248.221 of this part, and all low income affordability restrictions will be terminated with respect to some or all of the units; however, the owner would be responsible for ensuring that displaced current tenants are relocated to affordable housing, if necessary.

(ii) The Commissioner will approve the prepayment or termination of

mortgage insurance pursuant to § 248.221 of this part, and all low income affordability restrictions will be terminated, except (where necessary because the project is located in a housing market where there is insufficient comparable, decent, safe and sanitary affordable housing to meet the needs of all current tenants) with regard to protection of current very low income, low income and moderate income tenants;

(2) Where the plan of action would not be approvable under § 248.221 of this part—

(i) The Commissioner will approve prepayment or the termination of mortgage insurance, but the owner will receive assistance under a State, local or other Federal government housing program, and will receive incentives pursuant to § 248.231 of this part from the Federal government in return for agreeing to conditions related to the continued use of the project as low income housing in accordance with § 248.233 of this part.

(ii) The Commissioner will not approve prepayment or the termination of mortgage insurance, but will provide incentives to the owner pursuant to § 248.231 of this part in accordance with a plan of action meeting the standards of § 248.233 of this part;

(iii) The Commissioner will not approve prepayment or the termination of mortgage insurance, but, after failing to reach agreement on a negotiated plan of action, the owner and the Commissioner will agree to a package of incentives and restrictions prescribed by § 248.241 of this part; or

(iv) The Commissioner will not approve prepayment or the termination of mortgage insurance, and will not offer incentives of any kind.

(Approved by the Office of Management and Budget under control number 2502-0378)

[55 FR 38952, Sept. 21, 1990. Redesignated at 57 FR 12041, Apr. 8, 1992, and amended at 58 FR 37816, July 13, 1993]

§ 248.213 Plan of action.

(a) *Preparation and submission.* The owner shall submit the plan of action to the Commissioner in such form and manner as the Commissioner shall prescribe. The owner may submit the plan